

AMENDED IN SENATE JULY 15, 1997

AMENDED IN SENATE JUNE 30, 1997

AMENDED IN ASSEMBLY MAY 13, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1172**

**Introduced by Assembly Member Kaloogian**

February 28, 1997

---

---

An act to amend Section 641 of the Code of Civil Procedure, to amend Sections 39, ~~100, 101, 250~~ 250, 1060, 1061, 1063, 1064, 1890, 2356.5, 6562, 6573, 8226, ~~8500, 9000, 11950, 13651, 16246,~~ 17200, 17200.2, 17203, ~~19000,~~ 20123, 20223, and 21350 of, to add Sections ~~104.5,~~ 1046.5, 1460.1, ~~9005,~~ 16061.5, ~~16061.7, and~~ ~~19150.5~~ and 16061.7 to, to add Part 3 (commencing with Section 1300) to Division 3 of, to add Chapter 3 (commencing with Section 15810) ~~and Chapter 4 (commencing with Section 15830)~~ to Part 3 of Division 9 of, to repeal Sections 2312, 3024, 4948, 8406, 17207, and 19028 of, to repeal Chapter 11 (commencing with Section 2750) of Part 4 of Division 4, and to repeal Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7 of, the Probate Code, and to amend Sections 10850, 14100.2, 15610.30, and 15657 of the Welfare and Institutions Code, relating to estate planning, trust, and probate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1172, as amended, Kaloogian. Estates and trusts.

(1) Existing law authorizes the appointment of referees, as specified, to try any or all issues in a civil action or proceeding, whether of fact or law, and to report a statement of decision thereon or to ascertain a fact necessary to enable a court to determine an action or proceeding. Existing law provides specified grounds upon which a party may object to the appointment of a referee, including the ground that the person does not meet statutory qualifications to be a juror.

This bill would ~~provided~~ *provide* an exception to this ground if the statutory qualifications require the referee to be a resident of a particular county in the state.

(2) Existing law defines a fiduciary for purposes of the Probate Code to mean a personal representative, guardian, conservator, or other legal representative.

This bill would revise this definition to mean prescribed persons who are legal representatives subject to the Probate Code.

~~(3) Existing law prescribes the disposition of community and quasi-community property upon the death of a married person.~~

~~This bill would provide that, notwithstanding this provisions, a husband and wife may agree in writing to divide community or quasi-community property on the basis of a non pro rata division of the aggregate value of the property on the basis of a division of each individual item or asset of the property, or partly on each basis. This bill would provide that the transfer of community and quasi-community property prior to, on, or after January 1, 1998, to a revocable trust shall be presumed to be such an agreement. This bill would make various conforming changes.~~

~~(4) Existing law establishes the right to a hearing and notice regarding various actions under the Probate Code.~~

This bill would provide for an evidentiary hearing, upon request, on any contested issue of fact in any matter under the code and would provide that no notice is required to be given to children under 12 if one of ~~two~~ 2 specified conditions is met.

~~(5)~~

(4) Existing law generally regulates accounts to be filed with a court.

This bill would revise these regulatory provisions, as specified.

~~(6)~~

(5) Existing law requires any request for a court order to give a conservator the power to consent to medical treatment to be accompanied by a declaration by a licensed physician or psychologist within the scope of his or her practice.

This bill would revise this provision to instead prohibit the court order from being issued unless accompanied by this declaration.

~~(7)~~

(6) Existing law establishes the right to appeal the making or denial of various orders or judgments specified in the Probate Code.

This bill would revise and recast these provisions, as specified.

~~(8)~~

(7) Existing law prohibits the issuance of letters of guardianship or conservatorship before a copy of the court order appointing the guardian or conservator is mailed to the ward if 14 years of age or older.

This bill would repeal this provision.

~~(9)~~

(8) Existing law provides, with specified exceptions, that if a testator fails to provide in his or her will for a surviving spouse who married the testator after the execution of the will, the omitted spouse is required to receive one-half of the testator's community and quasi-community property and a share of the separate property of the testator equal in value to that which the spouse would have received if the testator had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate.

Existing law provides that if a testator fails to provide in his or her will for his or her child born or adopted after the execution of the will, the omitted child is required to receive a share in the estate equal in value to that which the child would have received if the testator had died intestate, except as specified.

This bill would provide that if a settlor fails to provide by revocable trust for his or her child born or adopted after the

execution of the revocable trust, the omitted child is required to receive a share in the trust estate equal in value to that which the child would have received if the settlor had died intestate and had not executed a revocable trust, except as specified.

This bill would also provide that if a settlor fails to provide by revocable trust for this surviving spouse after the execution of the revocable trust, the omitted spouse is required to receive one-half of the settlor's community and quasi-community property and a share of the separate property of the settlor equal in value to that which the spouse would have received if the testator had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate, except as specified.

~~(10)~~

(9) Existing law authorizes the admission of a will to probate notwithstanding the prior admission of another will. Existing law provides that the subsequent will may not affect property previously distributed, but authorizes the court to determine how this will affect property not yet distributed and the provisions of the other will.

This bill would prohibit the proponent of the subsequent will from petitioning to admit the will after specified conditions are met.

~~(11)~~

(10) Existing law provides that a person who is appointed a personal representative is not liable for any otherwise proper act done in good faith if the order of appointment is reversed on appeal.

This bill would delete this provision.

~~(12) Existing law specifies the requirements for service of a citation issued to the personal representative of a decedent's estate to appear and show cause why the personal representative should not be removed.~~

~~This bill would provide that, upon good cause shown, as specified, service of this citation shall be by mail.~~

~~(13) Existing law establishes the right of creditors to file a claim, as defined, during the administration of a decedent's estate.~~

~~This bill would revise the definition of a claim, as specified, and would provide that no action or proceeding may be filed for imposition of a constructive trust or for other specified equitable claim without compliance with the provisions regarding this right.~~

~~(14) Existing law authorizes a beneficiary to petition to have a court make an equitable partition, allotment, or division of property in an estate when there are two or more beneficiaries, as specified, subject to a specified limitation on this proceeding.~~

~~This bill would delete this limitation.~~

~~(15)~~

(11) Existing law imposes a duty upon a trustee to keep the beneficiaries of a trust reasonably informed and requires a trustee to provide, upon request, a beneficiary with a report of prescribed information regarding the trust, trustee, and administration of the trust.

This bill would require a trustee to provide other specified information regarding certain events in connection with an irrevocable trust, as specified, and would prohibit a person who receives a notice pursuant to these provisions from bringing an action to contest the trust after a specified period of time.

~~(16)~~

(12) Existing law prohibits donative transfers to prescribed persons, except as specified.

This bill would extend the applicability of this prohibition to donative transfers to care custodians of a dependent adult, as defined.

~~(17)~~

(13) Existing law prohibits the disclosure of confidential information regarding applicants and recipients of public assistance benefits, with certain exceptions.

This bill would revise these provisions to, among other things, require the State Department of Social Services to exchange specified information with the Department of Motor Vehicles regarding applicants or recipients of aid to the blind who hold a valid driver's license.

~~(18)~~

(14) Existing law defines "fiduciary abuse," as specified.

This bill would revise this definition to include a prescribed situation.

~~(19) Existing law generally regulates title insurers.~~

~~This bill would provide that neither the transfer of real property to a revocable trust, where the settler is the present beneficiary, nor the transfer of that real property by operation of the trust upon the settlor's death, would constitute a change of ownership for purposes of title insurance coverage.~~

~~(20)~~

(15) This bill would also make various technical and clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 641 of the Code of Civil  
2 Procedure is amended to read:

3 641. A party may object to the appointment of any  
4 person as referee, on one or more of the following  
5 grounds:

6 (a) A want of any of the qualifications prescribed by  
7 statute to render a person competent as a juror, except a  
8 requirement of residence within a particular county in  
9 the state.

10 (b) Consanguinity or affinity, within the third degree,  
11 to either party, or to an officer of a corporation which is  
12 a party, or to any judge of the court in which the  
13 appointment shall be made.

14 (c) Standing in the relation of guardian and ward,  
15 conservator and conservatee, master and servant,  
16 employer and clerk, or principal and agent, to either  
17 party; or being a member of the family of either party; or  
18 a partner in business with either party; or security on any  
19 bond or obligation for either party.

20 (d) Having served as a juror or been a witness on any  
21 trial between the same parties for the same cause of  
22 action.

23 (e) Interest on the part of such person in the event of  
24 the action, or in the main question involved in the action.

(f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.

(g) The existence of a state of mind in the potential referee evincing enmity against or bias to either party.

SEC. 2. Section 39 of the Probate Code is amended to read:

39. "Fiduciary" means personal representative, trustee, guardian, ~~guardian ad litem~~, conservator, attorney-in-fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act (Part 9 (commencing with Section 3900), Division 4), or other legal representative subject to this code.

~~SEC. 3. Section 100 of the Probate Code is amended to read:~~

~~100. (a) Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent.~~

~~(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their community property on the basis of a non pro rata division of the aggregate value of the community property or on the basis of a division of each individual item or asset of community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or recognize a non pro rata division of community property.~~

~~SEC. 4. Section 101 of the Probate Code is amended to read:~~

~~101. (a) Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent.~~

~~(b) Notwithstanding subdivision (a), a husband and wife may agree in writing to divide their quasi-community property on the basis of a non pro rata division of the aggregate value of the quasi-community property, or on the basis of a division of each individual item or asset of quasi-community property, or partly on each basis. Nothing in this subdivision shall be construed to require this written agreement in order to permit or~~

1 ~~recognize a non pro rata division of quasi-community~~  
2 ~~property.~~

3 ~~SEC. 5. Section 104.5 is added to the Probate Code, to~~  
4 ~~read:~~

5 ~~104.5. Transfer of community and quasi-community~~  
6 ~~property to a revocable trust shall be presumed to be an~~  
7 ~~agreement, pursuant to Sections 100 and 101, that those~~  
8 ~~assets retain their character in the aggregate for purposes~~  
9 ~~of any division provided by the trust. This section shall~~  
10 ~~apply to all transfers prior to, on, or after January 1, 1998.~~

11 ~~SEC. 6.~~

12 ~~SEC. 3. Section 250 of the Probate Code is amended~~  
13 ~~to read:~~

14 ~~250. (a) A person who feloniously and intentionally~~  
15 ~~kills the decedent is not entitled to any of the following:~~

16 ~~(1) Any property, interest, or benefit under a will of~~  
17 ~~the decedent, or a trust created by or for the benefit of the~~  
18 ~~decedent or in which the decedent has an interest,~~  
19 ~~including any general or special power of appointment~~  
20 ~~conferred by the will or trust on the killer and any~~  
21 ~~nomination of the killer as executor, trustee, guardian, or~~  
22 ~~conservator or custodian made by the will or trust.~~

23 ~~(2) Any property of the decedent by intestate~~  
24 ~~succession.~~

25 ~~(3) Any of the decedent's quasi-community property~~  
26 ~~the killer would otherwise acquire under Section 101 or~~  
27 ~~102 upon the death of the decedent.~~

28 ~~(4) Any property of the decedent under Part 5~~  
29 ~~(commencing with Section 5700) of Division 5.~~

30 ~~(5) Any property of the decedent under Part 3~~  
31 ~~(commencing with Section 6500) of Division 6.~~

32 ~~(b) In the cases covered by subdivision (a):~~

33 ~~(1) The property interest or benefit referred to in~~  
34 ~~paragraph (1) of subdivision (a) passes as if the killer had~~  
35 ~~predeceased the decedent and Section 21110 does not~~  
36 ~~apply.~~

37 ~~(2) Any property interest or benefit referred to in~~  
38 ~~paragraph (1) of subdivision (a) which passes under a~~  
39 ~~power of appointment and by reason of the death of the~~  
40 ~~decedent passes as if the killer had predeceased the~~

1 decedent, and Section 1389.4 of the Civil Code does not  
2 apply.

3 (3) Any nomination in a will or trust of the killer as  
4 executor, trustee, guardian, conservator, or custodian  
5 which becomes effective as a result of the death of the  
6 decedent shall be interpreted as if the killer had  
7 predeceased the decedent.

8 ~~SEC. 7.~~

9 SEC. 4. Section 1046.5 is added to the Probate Code,  
10 to read:

11 1046.5. Any contested issue of *material* fact in any  
12 matter under this code shall be set for an evidentiary  
13 hearing, upon the request of any party. *This section shall*  
14 *not preclude a motion for summary judgment or*  
15 *summary adjudication, nor shall it require an additional*  
16 *hearing after a referral under Section 639 of the Code of*  
17 *Civil Procedure.*

18 ~~SEC. 8.~~

19 SEC. 5. Section 1060 of the Probate Code is amended  
20 to read:

21 1060. This chapter governs all accounts to be filed  
22 with the court—~~under this code~~. Except as specifically  
23 provided elsewhere in this code, or unless good cause is  
24 shown therefore, no information in addition to that  
25 required in this chapter need be in an account.

26 SEC. 6. Section 1061 of the Probate Code is amended  
27 to read:

28 1061. (a) All accounts shall state the period covered  
29 by the account and contain a summary showing all of the  
30 following, to the extent applicable:

31 (1) The property on hand at the beginning of the  
32 period covered by the account, which shall be the value  
33 of the property initially received by the fiduciary if this  
34 is the first account, and shall be the property on hand at  
35 the end of the prior account if this is a subsequent  
36 account.

37 (2) The value of any assets received during the period  
38 of the accounting which are not assets on hand as of the  
39 commencement of the administration of an estate.

(3) The amount of any receipts of income or principal, excluding items listed under paragraphs (1) and (2) or receipts from a trade or business.

(4) Net income from a trade or business.

(5) Gains on sales.

(6) The amount of disbursements, excluding disbursements for a trade or business or distributions.

(7) Loss on sales.

(8) Net loss from trade or business.

(9) Distributions to beneficiaries, the ward or conservatee.

(10) Property on hand at the end of the accounting period, stated at its carry value.

(b) The summary shall be in a format substantially the same as the following, except that inapplicable categories need not be shown:

#### SUMMARY OF ACCOUNT

##### CHARGES:

Property on hand at beginning of account (or Inventories)	\$ _____
Additional property received (or supplemental inventories)	_____
Receipts (Schedule ____)	_____
Gains on Sale or Other Disposition (Schedule ____)	_____
Net income from trade or business (Schedule ____)	_____
Total Charges:	\$ _____

##### CREDITS:

Disbursements (Schedule ____)	\$ _____
Losses on Sale or Other Disposition (Schedule ____)	_____
Net loss from trade or business (Schedule ____)	_____
Distributions (Schedule ____)	_____

Property on hand at close of account  
(Schedule \_\_\_\_)

Total Credits:

\$ \_\_\_\_\_

(c) Total charges shall equal total credits.

(d) For purposes of this section, the terms “net income” and “net loss” shall be utilized in accordance with general accounting principles. Nothing in this section is intended to require that the preparation of the summary must include “net income” and “net loss” as reflected in the tax returns governing the period of the account.

~~SEC. 9.~~

SEC. 7. Section 1063 of the Probate Code is amended to read:

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) A schedule of purchases or other changes in the form of assets occurring during the period of the account. However, no reporting is required for transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) An allocation of receipt and disbursements between principal and income in any case where an estate of a decedent or a trust will be distributed to an income beneficiary.

(d) If there is specifically devised property, there shall be a separate schedule accounting for income, disbursements, and proceeds of sale pursuant to Sections 12002 and 16314.

(e) If any interest has been paid or is to be paid under Section 12003, 12004, 12005, or 16314, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule to set forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) A schedule of the liabilities of the estate or trust, except current or future periodic payments, including rent, salaries, utilities, or other recurring expenses, shall include all of the following:

(1) All liabilities which are a lien on estate or trust assets.

(2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.

(3) All notes payable.

(4) Any judgments for which the estate or trust is liable.

(5) Any other material liability.

~~SEC. 10.~~

*SEC. 8.* Section 1064 of the Probate Code is amended to read:

1064. (a) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) A description of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedule.

(2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid from the assets subject to the account to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior

1 court order. *For purposes of this paragraph, “family”*  
2 *means a relationship created by blood or marriage. For*  
3 *purposes of this paragraph, “affiliate” means a*  
4 *corporation that directly or indirectly through one or*  
5 *more intermediaries controls, is controlled by, or is under*  
6 *common control with another domestic or foreign*  
7 *corporation.*

8 (4) A statement disclosing any family or affiliate  
9 relationship between the fiduciary and any agent hired  
10 by the fiduciary during the accounting period.

11 (5) An allegation disclosing whether all of the cash has  
12 been invested and maintained in interest bearing  
13 accounts or in investments authorized by law or the  
14 governing instrument, except for an amount of cash that  
15 is reasonably necessary for the orderly administration of  
16 the estate.

17 (b) The filing of an account shall be deemed to include  
18 a petition requesting its approval, and may include  
19 additional petitions for authorization, instruction or  
20 confirmation authorized by the code, including, but not  
21 limited to, a request for an order for compensation of the  
22 fiduciary and the attorney for the fiduciary.

23 ~~SEC. 11.~~

24 SEC. 9. Section 1460.1 is added to the Probate Code,  
25 to read:

26 1460.1. Notwithstanding any other provisions of this  
27 division, no notice is required to be given to any child  
28 under the age of 12 years if the court determines either  
29 of the following:

30 (a) Notice was properly given to a parent, guardian, or  
31 other person having legal custody of the minor, with  
32 whom the minor resides.

33 (b) The petition is brought by a parent, guardian, or  
34 other person having legal custody of the minor, with  
35 whom the minor resides.

36 ~~SEC. 12.~~

37 SEC. 10. Section 1890 of the Probate Code is amended  
38 to read:

39 1890. (a) An order of the court under Section 1880  
40 may be included in the order of appointment of the

1 conservator if the order was requested in the petition for  
2 the appointment of the conservator or, except in the case  
3 of a limited conservator, may be made subsequently upon  
4 a petition made, noticed, and heard by the court in the  
5 manner provided in this article.

6 (b) In the case of a petition filed under this chapter  
7 requesting that the court make an order under this  
8 chapter or that the court modify or revoke an order made  
9 under this chapter, when the order applies to a limited  
10 conservatee, the order may only be made upon a petition  
11 made, noticed, and heard by the court in the manner  
12 provided by Article 3 (commencing with Section 1820) of  
13 Chapter 1.

14 (c) No court order under Section 1880, whether issued  
15 as part of an order granting the original petition for  
16 appointment of a conservator or issued subsequent  
17 thereto, may be granted unless supported by a  
18 declaration, filed at or before the hearing on the request,  
19 executed by a licensed physician, or a licensed  
20 psychologist within the scope of his or her licensure, and  
21 stating that the proposed conservatee or the conservatee,  
22 as the case may be, lacks the capacity to give an informed  
23 consent for any form of medical treatment and the  
24 reasons therefor. Nothing in this section shall be  
25 construed to expand the scope of practice of psychologists  
26 as set forth in the Business and Professions Code.

27 ~~SEC. 13.~~

28 *SEC. 11.* Part 3 (commencing with Section 1300) is  
29 added to Division 3 of the Probate Code, to read:

30  
31 PART 3. APPEALS  
32

33  
34 CHAPTER 1. GENERAL  
35

36  
37 1300. In all proceedings governed by this code, an  
38 appeal may be taken from the making of, or the refusal  
39 to make, any of the following orders:

1 (a) Directing, authorizing, approving, or confirming  
2 the sale, lease, encumbrance, grant of an option,  
3 purchase, conveyance, or exchange of property.

4 (b) Settling an account of a fiduciary.

5 (c) Authorizing, instructing, or directing a fiduciary,  
6 or approving or confirming the acts of a fiduciary.

7 (d) Directing or allowing payment of a debt, claim, or  
8 cost.

9 (e) Fixing, authorizing, allowing, or directing  
10 payment of compensation or expenses of an attorney.

11 (f) Fixing, directing, authorizing, or allowing payment  
12 of the compensation or expenses of a fiduciary.

13 (g) Surcharging, removing, or discharging a fiduciary.

14 (h) Transferring the property of the estate to a  
15 fiduciary in another jurisdiction.

16 (i) Allowing or denying a petition of the fiduciary to  
17 resign.

18 (j) Discharging a surety on the bond of a fiduciary.

19 1301. With respect to guardianships,  
20 conservatorships, and other protective proceedings, the  
21 grant or refusal to grant the following—~~additional orders~~  
22 *orders, in addition to those appealable under Section*  
23 *1300*, is also appealable:

24 (a) Granting or revoking of letters of guardianship or  
25 conservatorship, except letters of temporary  
26 guardianship or temporary conservatorship.

27 (b) Granting permission to the guardian or  
28 conservator to fix the residence of the ward or  
29 conservatee at a place not within this state.

30 (c) Directing, authorizing, approving, or modifying  
31 payments whether support, maintenance, or education of  
32 the ward or conservatee or a person legally entitled to  
33 support, maintenance, or education from the ward or  
34 conservatee.

35 (d) Granting or denying a petition under Section 2423  
36 or under Article 10 (commencing with Section 2580) of  
37 Chapter 6 of Part 4 of Division 4.

38 (e) Affecting the legal capacity of the conservatee  
39 pursuant to Chapter 4 (commencing with Section 1870)  
40 of Part 3 of Division 4.

(f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Article 6 (commencing with Section 2520) of Chapter 6 of Part 4 of Division 4.

(g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4.

1302. With respect to a power of attorney, the grant or refusal to grant the following—~~additional orders~~ *orders*, *in addition to those appealable under Section 1300*, is also appealable:

(a) Any final order under Section 4941, except an order pursuant to subdivision (c) of Section 4941.

(b) Any final order under Section 4942, except an order pursuant to subdivision (c) of Section 4942.

(c) An order dismissing the petition or denying a motion to dismiss under Section 4944.

1303. With respect to a decedent's estate, the grant or refusal to grant the following—~~additional orders~~ *orders*, *in addition to those appealable under Section 1300*, is also appealable:

(a) Granting or revoking letters to a personal representative, except letters of special administration *or letters of special administration with general powers*.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.

(g) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.

(h) Directing distribution of property. Orders on ~~petition~~ *partition*, allotment, or other division of property may be appealed from an order for distribution of the

1 *property being partitioned, allotted, or otherwise*  
2 *divided.*

3 (i) Determining that property passes to, or confirming  
4 that property belongs to, the surviving spouse under  
5 Section 13656.

6 (j) Authorizing a personal representative to invest or  
7 reinvest surplus money under Section 9732.

8 (k) Determining whether an action constitutes a  
9 contest under Chapter 2 (commencing with Section  
10 21320) of Part 3 of Division 11.

11 1304. With respect to a trust, the grant or denial of the  
12 following—~~additional orders~~ *orders, in addition to those*  
13 *appealable under Section 1300* is also appealable:

14 (a) Any final order under Chapter 3 (commencing  
15 with Section 17200) of Part 5 of Division 9, except the  
16 following:

17 (1) Compelling the trustee to submit an account or  
18 report acts as trustee.

19 (2) Accepting the resignation of the trustee.

20 (b) Any final order under Chapter 2 (commencing  
21 with Section 19020) of Part 8 of Division 9.

22 (c) Any final order under Part 1 (commencing with  
23 Section 20100) and Part 2 (commencing with Section  
24 20200) of Division 10.

25 (d) Determining whether an action constitutes a  
26 contest under Chapter 2 (commencing with Section  
27 21320) of Part 3 of Division 11.

28

29 CHAPTER 2. EFFECT OF AN APPEAL

30

31 1310. (a) Except as provided in subdivisions (b), (c),  
32 and (d), an appeal pursuant to Chapter 1 stays the  
33 operation and effect of the judgment or order.

34 (b) Notwithstanding that an appeal is taken from the  
35 judgment or order, for the purpose of preventing injury  
36 or loss to a person or property, the trial court may direct  
37 the exercise of the powers of the fiduciary, or may appoint  
38 a temporary guardian or conservator of the person or  
39 estate, or both, or special administrator, to exercise the  
40 powers, from time to time, as if no appeal were pending.

1 All acts of the fiduciary pursuant to the directions of the  
2 court made under this subdivision are valid, irrespective  
3 of the result of the appeal. *An appeal of the directions*  
4 *made by the court under this subdivision may not stay*  
5 *these directions.*

6 (c) In proceedings for guardianship of the person,  
7 Section 917.7 of the Code of Civil Procedure shall apply.

8 (d) An appeal shall not stay the operation and effect of  
9 the order if the court requires an undertaking, as  
10 provided in Section 917.9 of the Code of Civil Procedure,  
11 and the undertaking is not given.

12 1311. If an order appointing a fiduciary is reversed on  
13 appeal for error, all acts of the fiduciary performed after  
14 issuance of letters and prior to the reversal are as valid as  
15 though the order were affirmed and the person  
16 appointed is not liable for any otherwise proper act done  
17 in good faith before the reversal, nor is any transaction  
18 void by reason of the reversal if entered into with a third  
19 person dealing in good faith and for value.

20 1312. Notwithstanding the repeal of former Section  
21 1297 by Chapter 1199 of the Statutes of 1988, an appeal  
22 may be taken from an order or the refusal to make an  
23 order fixing an inheritance tax or determining that none  
24 is due.

25 ~~SEC. 14.~~

26 ~~SEC. 12.~~ Section 2312 of the Probate Code is repealed.

27 ~~SEC. 15.~~

28 ~~SEC. 13.~~ Section 2356.5 of the Probate Code is  
29 amended to read:

30 2356.5. (a) The Legislature hereby finds and  
31 declares:

32 (1) That people with dementia, as defined in the last  
33 published edition of the “Diagnostic and Statistical  
34 Manual of Mental Disorders,” should have a  
35 conservatorship to serve the unique and special needs of  
36 these patients.

37 (2) That, by adding powers to the probate  
38 conservatorship for people with dementia, their unique  
39 and special needs can be met. This will reduce costs to the  
40 conservatee and the family of the conservatee, reduce

1 costly administration by state and county government,  
2 and safeguard the basic dignity and rights of the  
3 conservatee.

4 (3) That it is the intent of the Legislature to recognize  
5 that the administration of psychotropic medications has  
6 been, and can be, abused by caregivers and, therefore,  
7 granting powers to a conservator to authorize such  
8 medications for the treatment of dementia requires the  
9 protections specified in this section.

10 (b) Notwithstanding any other provision of law, a  
11 conservator may authorize the placement of a  
12 conservatee in a secured perimeter residential care  
13 facility for the elderly operated pursuant to Section  
14 1569.698 of the Health and Safety Code, or a locked and  
15 secured nursing facility which specializes in the care and  
16 treatment of people with dementia pursuant to  
17 subdivision (c) of Section 1569.691 of the Health and  
18 Safety Code, and which has a care plan that meets the  
19 requirements of Section 87724 of Title 22 of the California  
20 Code of Regulations, upon a court's finding, by clear and  
21 convincing evidence, of all of the following:

22 (1) The conservatee has dementia, as defined in the  
23 last published edition of the "Diagnostic and Statistical  
24 Manual of Mental Disorders."

25 (2) The conservatee lacks the capacity to give  
26 informed consent to this placement and has at least one  
27 mental function deficit pursuant to subdivision (a) of  
28 Section 812, and this deficit significantly impairs the  
29 person's ability to understand and appreciate the  
30 consequences of his or her actions pursuant to subdivision  
31 (b) of Section 812.

32 (3) The conservatee needs or would benefit from a  
33 restricted and secure environment, as demonstrated by  
34 evidence presented by the physician or psychologist  
35 referred to in paragraph (3) of subdivision (f).

36 (4) The court finds that the proposed placement in a  
37 locked facility is the least restrictive placement  
38 appropriate to the needs of the conservatee.

39 (c) Notwithstanding any other provision of law, a  
40 conservator of a person may authorize the administration

1 of medications appropriate for the care and treatment of  
2 dementia, upon a court's finding, by clear and convincing  
3 evidence, of all of the following:

4 (1) The conservatee has dementia, as defined in the  
5 last published edition of the "Diagnostic and Statistical  
6 Manual of Mental Disorders."

7 (2) The conservatee lacks the capacity to give  
8 informed consent to the administration of medications  
9 appropriate to the care of dementia, and has at least one  
10 mental function deficit pursuant to subdivision (a) of  
11 Section 812, and this deficit or deficits significantly  
12 impairs the person's ability to understand and appreciate  
13 the consequences of his or her actions pursuant to  
14 subdivision (b) of Section 812.

15 (3) The conservatee needs or would benefit from  
16 appropriate medication as demonstrated by evidence  
17 presented by the physician or psychologist referred to in  
18 paragraph (3) of subdivision (f).

19 (d) Pursuant to subdivision (b) of Section 2355, in the  
20 case of a person who is an adherent of a religion whose  
21 tenets and practices call for a reliance on prayer alone for  
22 healing, the treatment required by the conservator under  
23 subdivision (c) shall be by an accredited practitioner of  
24 that religion in lieu of the administration of medications.

25 (e) A conservatee who is to be placed in a facility  
26 pursuant to this section shall not be placed in a mental  
27 health rehabilitation center as described in Section 5675  
28 of the Welfare and Institutions Code, or in an institution  
29 for mental disease as described in Section 5900 of the  
30 Welfare and Institutions Code.

31 (f) A petition for authority to act under this section  
32 shall be governed by Section 2357, except:

33 (1) The conservatee shall be represented by an  
34 attorney pursuant to Chapter 4 (commencing with  
35 Section 1470) of Part 1.

36 (2) The conservatee shall be produced at the hearing,  
37 unless excused pursuant to Section 1893.

38 (3) The petition shall be supported by a declaration of  
39 a licensed physician, or a licensed psychologist within the  
40 scope of his or her licensure, regarding each of the

1 findings required to be made under this section for any  
2 power requested, except that the psychologist has at least  
3 two years of experience in diagnosing dementia.

4 (4) The petition may be filed by any of the persons  
5 designated in Section 1891.

6 (g) The court investigator shall annually investigate  
7 and report to the court every two years pursuant to  
8 Sections 1850 and 1851 if the conservator is authorized to  
9 act under this section. In addition to the other matters  
10 provided in Section 1851, the conservatee shall be  
11 specifically advised by the investigator that the  
12 conservatee has the right to object to the conservator's  
13 powers granted under this section, and the report shall  
14 also include whether powers granted under this section  
15 are warranted. If the conservatee objects to the  
16 conservator's powers granted under this section, or the  
17 investigator determines that some change in the powers  
18 granted under this section is warranted, the court shall  
19 provide a copy of the report to the attorney of record for  
20 the conservatee. If no attorney has been appointed for the  
21 conservatee, one shall be appointed pursuant to Chapter  
22 4 (commencing with Section 1470) of Part 1. The attorney  
23 shall, within 30 days after receiving this report, do one of  
24 the following:

25 (1) File a petition with the court regarding the status  
26 of the conservatee.

27 (2) File a written report with the court stating that the  
28 attorney has met with the conservatee and determined  
29 that the petition would be inappropriate.

30 (h) A petition to terminate authority granted under  
31 this section shall be governed by Section 2359.

32 (i) Nothing in this section shall be construed to affect  
33 a conservatorship of the estate of a person who has  
34 dementia.

35 (j) Nothing in this section shall affect the laws that  
36 would otherwise apply in emergency situations.

37 (k) Nothing in this section shall affect current law  
38 regarding the power of a probate court to fix the  
39 residence of a conservatee or to authorize medical

1 treatment for any conservatee who has not been  
2 determined to have dementia.

3 (I) (1) Until such time as the conservatorship  
4 becomes subject to review pursuant to Section 1850, this  
5 section shall not apply to a conservatorship established on  
6 or before the effective date of the adoption of Judicial  
7 Council forms that reflect the procedures authorized by  
8 this section, or January 1, 1998, whichever occurs first.

9 (2) Upon the adoption of Judicial Council forms that  
10 reflect the procedures authorized by this section or  
11 January 1, 1998, whichever occurs first, this section shall  
12 apply to any conservatorships established after that date.

13 ~~SEC. 16.~~

14 *SEC. 14.* Section 3024 of the Probate Code is repealed.

15 ~~SEC. 17.~~

16 *SEC. 15.* Chapter 11 (commencing with Section 2750)  
17 of Part 4 of Division 4 of the Probate Code is repealed.

18 ~~SEC. 18.~~

19 *SEC. 16.* Section 4948 of the Probate Code is repealed.

20 ~~SEC. 19.~~

21 *SEC. 17.* Section 6562 of the Probate Code is amended  
22 to read:

23 6562. (a) Except as provided in subdivision (b), in  
24 satisfying a share provided by this article:

25 (1) The share shall first be taken from the transferor's  
26 estate not disposed of by will or trust, if any.

27 (2) If that is not sufficient, so much as may be  
28 necessary to satisfy the share shall be taken from all  
29 beneficiaries of the estate or the trust in proportion to the  
30 value they may respectively receive. This value shall be  
31 determined as of the date of the decedent's death.

32 (b) If the obvious intention of the decedent in relation  
33 to some specific devise or other provision for disposition  
34 of the estate would be defeated by the application of  
35 subdivision (a), the specific devise or provision may be  
36 exempted from the apportionment under subdivision  
37 (a), and a different apportionment, consistent with the  
38 intention of the settlor or testator, may be adopted.

39 ~~SEC. 20.~~

1     *SEC. 18.* Section 6573 of the Probate Code is amended  
2 to read:

3     6573. (a) Except as provided in subdivision (b), in  
4 satisfying a share provided by this article:

5         (1) The share shall first be taken from the transferor's  
6 estate not disposed of by will or by revocable trust, if any.

7         (2) If that is not sufficient, so much as may be  
8 necessary to satisfy the share shall be taken from all  
9 beneficiaries of the estate or the trust in proportion to the  
10 value they may respectively receive. Such value shall be  
11 determined as of the date of the decedent's death.

12         (b) If the obvious intention of the decedent in relation  
13 to some specific devise or other provision for disposition  
14 of the estate would be defeated by the application of  
15 subdivision (a), the specific devise or provision may be  
16 exempted from the apportionment under subdivision  
17 (a), and a different apportionment, consistent with the  
18 intention of the settlor or testator, may be adopted.

19     ~~SEC. 21.~~

20     *SEC. 19.* Article 3 (commencing with Section 7240) of  
21 Chapter 3 of *Part 1* of Division 7 of the Probate Code is  
22 repealed.

23     ~~SEC. 22.~~

24     *SEC. 20.* Section 8226 of the Probate Code is amended  
25 to read:

26         8226. (a) If no person contests the validity of a will or  
27 petitions for revocation of probate of the will within the  
28 time provided in this chapter, admission of the will to  
29 probate is conclusive, subject to Section 8007.

30         (b) Subject to subdivision (c), a will may be admitted  
31 to probate notwithstanding prior admission to probate of  
32 another will or prior distribution of property in the  
33 proceeding. The will may not affect property previously  
34 distributed, but the court may determine how any  
35 provision of the will affects property not yet distributed  
36 and how any provision of the will affects provisions of  
37 another will.

38         (c) If the proponent of a will has received notice of a  
39 petition for probate or a petition for letters of  
40 administration for a general personal representative, the

1 proponent of the will may petition for probate of the will  
2 only within the later of either of the following time  
3 periods:

4 (1) One hundred twenty days after issuance of the  
5 order admitting the first will to probate or determining  
6 the decedent to be intestate.

7 (2) Thirty days after the proponent of the will first  
8 obtains knowledge of the will.

9 ~~SEC. 23.~~

10 ~~SEC. 21.~~ Section 8406 of the Probate Code is repealed.

11 ~~SEC. 24.~~ Section 8500 of the Probate Code is amended  
12 to read:

13 ~~8500. (a) Any interested person may petition for~~  
14 ~~removal of the personal representative from office. A~~  
15 ~~petition for removal may be combined with a petition for~~  
16 ~~appointment of a successor personal representative~~  
17 ~~under Article 7 (commencing with Section 8520). The~~  
18 ~~petition shall state facts showing cause for removal.~~

19 ~~(b) On a petition for removal, or if the court otherwise~~  
20 ~~has reason to believe from the court's own knowledge or~~  
21 ~~from other credible information, whether on the~~  
22 ~~settlement of an account or otherwise, that there are~~  
23 ~~grounds for removal, the court shall issue a citation to the~~  
24 ~~personal representative to appear and show cause why~~  
25 ~~the personal representative should not be removed. The~~  
26 ~~court may suspend the powers of the personal~~  
27 ~~representative and may make such orders as are~~  
28 ~~necessary to deal with the property pending the hearing.~~

29 ~~(c) Any interested person may appear at the hearing~~  
30 ~~and file a written declaration showing that the personal~~  
31 ~~representative should be removed or retained. The~~  
32 ~~personal representative may demur to or answer the~~  
33 ~~declaration. The court may compel the attendance of the~~  
34 ~~personal representative and may compel the personal~~  
35 ~~representative to answer questions, on oath, concerning~~  
36 ~~the administration of the estate. Failure to attend or~~  
37 ~~answer is cause for removal of the personal~~  
38 ~~representative from office.~~

39 ~~(d) The issues shall be heard and determined by the~~  
40 ~~court. If the court is satisfied from the evidence that the~~

1 ~~citation has been duly served and cause for removal exists,~~  
2 ~~the court shall remove the personal representative from~~  
3 ~~office.~~

4 ~~(e) A citation issued pursuant to this section shall be~~  
5 ~~served in accordance with Section 1242, except that, on~~  
6 ~~good cause shown, the court may order that service of the~~  
7 ~~citation shall be by mail, to the last known address of the~~  
8 ~~personal representative acting in propria persona, or to~~  
9 ~~the last known address of the attorney of record for the~~  
10 ~~personal representative if the personal representative has~~  
11 ~~an attorney of record. “Good cause” may be shown by an~~  
12 ~~affidavit or declaration from the petitioner for removal,~~  
13 ~~or any interested person, including any court employee,~~  
14 ~~that due and diligent efforts have been made to serve the~~  
15 ~~personal representative with a copy of the petition and~~  
16 ~~citation within the time allowed by law, but that those~~  
17 ~~efforts have been unsuccessful.~~

18 ~~SEC. 25. Section 9000 of the Probate Code is amended~~  
19 ~~to read:~~

20 ~~9000. As used in this division:~~

21 ~~(a) “Claim” means a demand for payment for any of~~  
22 ~~the following, whether due, not due, accrued or not~~  
23 ~~accrued, or contingent, and whether liquidated or~~  
24 ~~unliquidated:~~

25 ~~(1) Liability of the decedent, whether arising in~~  
26 ~~contract, tort, or otherwise.~~

27 ~~(2) Liability for taxes incurred before the decedent’s~~  
28 ~~death, whether assessed before or after the decedent’s~~  
29 ~~death, other than property taxes and assessments secured~~  
30 ~~by real property liens.~~

31 ~~(3) Liability of the estate for funeral expenses of the~~  
32 ~~decedent.~~

33 ~~(4) Liability for any claim that decedent died bound~~  
34 ~~by a contract to make a will, trust, or other promise to~~  
35 ~~leave property on decedent’s death, whether the claim is~~  
36 ~~for specific property or otherwise.~~

37 ~~(b) “Claim” does not include a dispute regarding a~~  
38 ~~claim that decedent did not have title to specific property~~  
39 ~~alleged to be included in the decedent’s estate.~~

~~SEC. 26. Section 9005 is added to the Probate Code, to read:~~

~~9005. No action or proceeding may be filed for imposition of a constructive trust or other equitable claim described in paragraph (4) of subdivision (a) of Section 9000 against property passing through the estate without complying with this part.~~

~~SEC. 27. Section 11950 of the Probate Code is amended to read:~~

~~11950. If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.~~

~~SEC. 28. Section 13651 of the Probate Code is amended to read:~~

~~13651. (a) A petition filed pursuant to Section 13650 shall allege that administration of all or a part of the estate of the deceased spouse is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse, and shall set forth all of the following information:~~

~~(1) If proceedings for the administration of the estate are not pending, the facts necessary to determine the county in which the estate of the deceased spouse may be administered.~~

~~(2) A description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse, including the trade or business name of any property passing to the surviving spouse that consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.~~

1     ~~(3) The facts upon which the petitioner bases the~~  
2 ~~allegation that all or a part of the estate of the deceased~~  
3 ~~spouse is property passing to the surviving spouse.~~

4     ~~(4) A description of any interest in the community~~  
5 ~~property or quasi-community property, or both, which~~  
6 ~~the petitioner requests the court to confirm to the~~  
7 ~~surviving spouse as belonging to the surviving spouse~~  
8 ~~pursuant to Section 100 or 101, subject to any written~~  
9 ~~agreement between the deceased spouse and the~~  
10 ~~surviving spouse providing for a non pro rata division of~~  
11 ~~the aggregate value of the community property assets or~~  
12 ~~quasi-community assets, or both.~~

13     ~~(5) The name, age, address, and relation to the~~  
14 ~~deceased spouse of each heir and devisee of the deceased~~  
15 ~~spouse, the names and addresses of all persons named as~~  
16 ~~executors of the will of the deceased spouse, and the~~  
17 ~~names and addresses of all persons appointed as personal~~  
18 ~~representatives of the deceased spouse, which are known~~  
19 ~~to the petitioner.~~

20     ~~(6) Disclosure of any written agreement between the~~  
21 ~~deceased spouse and the surviving spouse providing for~~  
22 ~~a non pro rata division of the aggregate value of the~~  
23 ~~community property assets or quasi-community property~~  
24 ~~assets, or both, or the affirmative statement that this~~  
25 ~~agreement does not exist. If a dispute arises as to the~~  
26 ~~division of the community property assets or~~  
27 ~~quasi-community property assets, or both, pursuant to~~  
28 ~~this agreement, the court shall determine the division~~  
29 ~~subject to terms and conditions or other remedies that~~  
30 ~~appear equitable under the circumstances of the case,~~  
31 ~~taking into account the rights of all interested persons.~~

32     ~~(b) If the petitioner bases the allegation that all or part~~  
33 ~~of the estate of the deceased spouse is property passing to~~  
34 ~~the surviving spouse upon the will of the deceased spouse,~~  
35 ~~a copy of the will shall be attached to the petition.~~

36     ~~(c) If the petitioner bases the description of the~~  
37 ~~property of the deceased spouse passing to the surviving~~  
38 ~~spouse or the property to be confirmed to the surviving~~  
39 ~~spouse, or both, upon a written agreement between the~~  
40 ~~deceased spouse and the surviving spouse providing for~~

~~1 a non pro rata division of the aggregate value of the  
2 community property assets or quasi community assets, or  
3 both, a copy of the agreement shall be attached to the  
4 petition.~~

~~5 SEC. 29.~~

6 SEC. 22. Chapter 3 (commencing with Section 15810)  
7 is added to Part 3 of Division 9 of the Probate Code, to  
8 read:

9  
10 CHAPTER 3. OMITTED SPOUSES AND CHILDREN

11  
12 Article 1. Omitted Spouses

13  
14 15810. Except as provided in Section 15811, if a settlor  
15 fails to provide in a revocable trust for the settlor's  
16 surviving spouse who married the settlor after the  
17 execution of the revocable trust, the omitted spouse shall  
18 receive a share in the settlor's estate consisting of the  
19 following property in the estate:

20 (a) The one-half of the community property that  
21 belongs to the settlor under Section 100.

22 (b) The one-half of the quasi-community property  
23 that belongs to the settlor under Section 101.

24 (c) A share of the separate property of the settlor  
25 equal in value to that which the spouse would have  
26 received if the settlor had died intestate and had not  
27 executed a revocable trust, but in no event is the share to  
28 be more than one-half the value of the separate property  
29 of the estate.

30 15811. The spouse does not receive a share of the  
31 estate under Section 15810 if any of the following is  
32 established:

33 (a) The settlor's failure to provide for the spouse in the  
34 revocable trust was intentional and that intention  
35 appears from the revocable trust.

36 (b) The settlor provided for the spouse by transfer  
37 outside of the revocable trust and the intention that the  
38 transfer be in lieu of a provision in the revocable trust is  
39 shown by statements of settlor, or from the amount of the  
40 transfer, or by other evidence.

1 (c) The spouse made a valid agreement waiving the  
2 right to share in the settlor's estate.

3 15812. (a) Except as provided in subdivision (b), in  
4 satisfying a share provided by this chapter:

5 (1) The share shall first be taken from the settlor's  
6 estate not disposed of by will or trust, if any.

7 (2) If that is not sufficient, so much as may be  
8 necessary to satisfy the share shall be taken from all  
9 beneficiaries of the trust or the estate in proportion to the  
10 value they may respectively receive. This value shall be  
11 determined as of the date of the decedent's death.

12 (b) If the obvious intention of the decedent in relation  
13 to some specific devise or other provision for the  
14 disposition would be defeated by the application of  
15 subdivision (a), the specific devise or provision may be  
16 exempted from the apportionment under subdivision  
17 (a), and a different apportionment, consistent with the  
18 intention of the settlor or testator, may be adopted.

19  
20 Article 2. Omitted Children  
21

22 15820. Except as provided in Section 15821, if a settlor  
23 fails to provide in the revocable trust for a child of the  
24 settlor born or adopted after the execution of the  
25 revocable trust, the omitted child shall receive a share in  
26 the trust estate equal in value to that which the child  
27 would have received if the settlor had died intestate and  
28 had not executed a revocable trust.

29 15821. A child does not receive a share of the estate  
30 under Section 15820 if any of the following is established:

31 (a) The settlor's failure to provide for the child in the  
32 revocable trust was intentional and that intention  
33 appears from the revocable trust.

34 (b) The settlor had one or more children and devised  
35 or otherwise directed the disposition of substantially all  
36 the estate to the other parent of the omitted child.

37 (c) The settlor provided for the child by transfer  
38 outside of the revocable trust and the intention that the  
39 transfer be in lieu of a provision in the revocable trust is

1 shown by statements of settlor, or from the amount of the  
2 transfer, or by other evidence.

3 15823. (a) Except as provided in subdivision (b), in  
4 satisfying a share provided by this chapter:

5 (1) The share shall first be taken from the settlor's  
6 estate not disposed of by will or trust, if any.

7 (2) If that is not sufficient, so much as may be  
8 necessary to satisfy the share shall be taken from all  
9 beneficiaries of the trust or the estate in proportion to the  
10 value they may respectively receive. This value shall be  
11 determined as of the date of the decedent's death.

12 (b) If the obvious intention of the decedent in relation  
13 to some specific devise or other provision for the  
14 disposition would be defeated by the application of  
15 subdivision (a), the specific devise or provision may be  
16 exempted from the apportionment under subdivision  
17 (a), and a different apportionment, consistent with the  
18 intention of the settlor or testator, may be adopted.

19 ~~SEC. 30. Chapter 4 (commencing with Section 15830)~~  
20 ~~is added to Part 3 of Division 9 of the Probate Code, to~~  
21 ~~read:~~

22  
23 ~~CHAPTER 4. REAL PROPERTY IN A TRUST~~  
24

25 ~~15830. Neither the transfer of real property to a~~  
26 ~~revocable trust, where the trust settlor or settlors are the~~  
27 ~~present beneficiary or beneficiaries of the trust, nor the~~  
28 ~~transfer of that real property by operation of the trust~~  
29 ~~upon the death of the settlor or settlors, shall constitute~~  
30 ~~a change of ownership for purposes of title insurance~~  
31 ~~coverage.~~

32 ~~SEC. 31.~~

33 ~~SEC. 23.~~ Section 16061.5 is added to the Probate Code,  
34 to read:

35 16061.5. When a revocable trust or any portion  
36 thereof becomes irrevocable because of the death of one  
37 or more of the settlors of the trust, the trustee shall, on  
38 request, provide a true and complete copy of the terms  
39 of the trust to each beneficiary of the trust and to each  
40 heir of a deceased settlor ~~of whose existence the trustee~~

~~has actual knowledge.~~ *The trustee need not provide a copy of the terms of the trust to any beneficiary or heir who (a) is known to the trustee but cannot be located by the trustee after reasonable diligence, or (b) is unknown to the trustee.* The trustee shall, for purposes of this section, rely upon any final judicial determination of heirship. However, the trustee shall have discretion to make a good faith determination by any reasonable means of the heirs of a deceased settlor in the absence of a final judicial determination of heirship.

~~SEC. 32.~~

SEC. 24. Section 16061.7 is added to the Probate Code, to read:

16061.7. (a) A trustee shall serve a notice described in this section in either of the following cases:

(1) When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust or for any other reason.

(2) When there is a change of trustees of an irrevocable trust.

(b) The notification—~~of~~ by trustee required by subdivision (a) shall be served on each of the following:

(1) Each beneficiary of the trust or the irrevocable portion of the trust, subject to the limitations of ~~Section~~ Sections 15800 and 15804.

(2) If the event which requires trustee notification is the death of a settlor, to each heir of the deceased settlor *of whom the trustee has actual knowledge. Notice to heirs of the settlor shall be given by mail to the last known address of each of the heirs, pursuant to Section 1215. If the trustee does not know of any address for an heir, notice to that heir shall be made by publication pursuant to Section 6064 of the Government Code.*

(3) If the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General.

(c) The notification by trustee shall be served in the manner provided in Part 2 (commencing with Section 1200) of Division 3.

1 (d) The notification by trustee shall be served not later  
2 than 30 days following the occurrence of the event  
3 requiring service of the trustee notification, or 30 days  
4 following the trustee's becoming aware of the existence  
5 of a person entitled to receive notification by trustee, if  
6 that person was not known to the trustee on the  
7 occurrence of the event requiring service of the trustee  
8 notification. If there is a vacancy in the office of the  
9 trustee on the date of the occurrence of the event  
10 requiring service of the notification by trustee, or if that  
11 event causes a vacancy, then the 30-day period for service  
12 of the notification by trustee commences on the date the  
13 new trustee commences to serve as trustee.

14 (e) The notification by trustee shall contain the  
15 following information:

16 (1) The identity of the settlor or settlors of the trust  
17 and the date of execution of the trust instrument.

18 (2) The name, mailing address and telephone number  
19 of each trustee of the trust.

20 (3) *The address of the physical location where the*  
21 *principal place of administration of the trust is located*  
22 *pursuant to Section 17002.*

23 (4) Any additional information which may be required  
24 by the terms of the trust instrument.

25 ~~(4)~~

26 (5) A notification that the recipient is entitled, upon  
27 reasonable request to the trustee, to receive from the  
28 trustee a true and complete copy of the terms of the trust.

29 (f) A trustee who fails to serve the notification by  
30 trustee as required by this section shall be responsible for  
31 all damages, including attorney's fees and costs, caused by  
32 the failure; provided, however, that this subdivision shall  
33 not apply in any case where a trustee makes a good faith  
34 effort to comply with this section. A trustee shall, for  
35 purposes of this section, rely upon any final judicial  
36 determination of heirship; but the trustee shall have  
37 discretion to make a good faith determination by any  
38 reasonable means of the heirs of a deceased settlor in the  
39 absence of a final judicial determination of heirship  
40 known to the trustee.

(g) Any waiver by a settlor of the requirement of serving the notification by trustee required by this section is against public policy and shall be void.

(h) A trustee may ~~give the notice required by this section to any other person to whom it is not required to be given. A trustee shall not be liable either for giving, or for not giving, notice to any such other person.~~ *serve a notification by trustee in the form required by this section on any person or persons in addition to those on whom the notice is required to be served. A trustee is not liable to any person for serving or for not serving the notice on any person in addition to those on whom the notice is required to be served.*

(i) No person who receives ~~notice~~ *the notification by trustee pursuant to this section* ~~shall~~ *may* bring an action to contest the trust more than 120 days from the date the ~~notice notification by trustee~~ is served upon him or her, or 60 days from the day ~~during that 120-day period~~ on which a copy of the ~~trust is mailed to that person~~ *terms of the trust is mailed to him or her* in response to his or her request *during that 120-day period*, whichever is later.

~~SEC. 33. Section 16246 of the Probate Code is amended to read:~~

~~16246. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non pro rata, and may be made pursuant to any written agreement providing for a non pro rata division of the aggregate value of the community property assets or quasi-community property assets, or both.~~

~~SEC. 34.~~

~~SEC. 25. Section 17200 of the Probate Code is amended to read:~~

~~17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.~~

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United

1 States Internal Revenue Service, in any case in which all  
2 parties interested in the trust have submitted written  
3 agreement to the proposed changes or written disclaimer  
4 of interest.

5 (16) Authorizing or directing transfer of a trust or trust  
6 property to or from another jurisdiction.

7 (17) Directing transfer of a testamentary trust subject  
8 to continuing court jurisdiction from one county to  
9 another.

10 (18) Approving removal of a testamentary trust from  
11 continuing court jurisdiction.

12 (19) Reforming or excusing compliance with the  
13 governing instrument of an organization pursuant to  
14 Section 16105.

15 (20) Determining the liability of the trust for any debts  
16 of a deceased settlor. However, nothing in the paragraph  
17 shall provide standing to bring an action concerning the  
18 internal affairs of the trust to a person whose only claim  
19 to the assets of the decedent is a creditor.

20 (21) Determining the liability of the trust or trustee  
21 for any tort or contract.

22 (22) Determining petitions filed pursuant to Section  
23 15687 and reviewing the reasonableness of compensation  
24 for legal services authorized under that section. In  
25 determining the reasonableness of compensation under  
26 this paragraph, the court may consider, together with all  
27 other relevant circumstances, whether prior approval  
28 was obtained pursuant to Section 15687.

29 ~~SEC. 35.~~

30 *SEC. 26.* Section 17200.2 of the Probate Code is  
31 amended to read:

32 17200.2. The court shall not grant a petition under  
33 Section 17200 or 17200.1 if the court determines that the  
34 matter should be determined by a civil action.

35 ~~SEC. 36.~~

36 *SEC. 27.* Section 17203 of the Probate Code is  
37 amended to read:

38 17203. (a) At least 30 days before the time set for the  
39 hearing on the petition, the petitioner shall cause notice  
40 of hearing to be mailed to all of the following persons:

1 (1) All trustees.

2 (2) All beneficiaries, subject to Chapter 2  
3 (commencing with Section 15800) of Part 3.

4 (3) The Attorney General, if the petition relates to a  
5 charitable trust subject to the jurisdiction of the Attorney  
6 General.

7 (b) At least 30 days before the time set for hearing on  
8 the petition, the petitioner shall cause notice of the  
9 hearing and a copy of the petition to be served in the  
10 manner provided in Chapter 4 (commencing with  
11 Section 413.10) of Title 5 of Part 2 of the Code of Civil  
12 Procedure on any person other than a trustee or  
13 beneficiary whose right, title, or interest would be  
14 affected by the petition and who does not receive notice  
15 pursuant to subdivision (a). The court may not shorten  
16 the time for giving notice under this subdivision.

17 (c) If a person to whom notice otherwise would be  
18 given has been deceased for at least 40 days, and no  
19 personal representative has been appointed for the estate  
20 of that person, and the deceased person's right, title, or  
21 interest has not passed to any other person pursuant to  
22 Division 8 (commencing with Section 13000) or  
23 otherwise, notice may instead be given to the following  
24 persons:

25 (1) Each heir and devisee of the decedent, and all  
26 persons named as executors of the will of the decedent,  
27 so far as known to petitioner.

28 (2) Each person serving as guardian or conservator of  
29 the decedent at the time of the decedent's death, so far  
30 as known to the petitioner.

31 ~~SEC. 37.~~

32 ~~SEC. 28. Section 17207 of the Probate Code is~~  
33 ~~repealed.~~

34 ~~SEC. 38. Section 19000 of the Probate Code is~~  
35 ~~amended to read:~~

36 ~~19000. As used in this part:~~

37 ~~(a) "Claim" means a demand for payment for any of~~  
38 ~~the following, whether due, not due, accrued or not~~  
39 ~~accrued, or contingent, and whether liquidated or~~  
40 ~~unliquidated:~~

1 ~~(1) Liability of the deceased settlor, whether arising in~~  
2 ~~contract, tort, or otherwise.~~

3 ~~(2) Liability for taxes incurred before the deceased~~  
4 ~~settlor's death, whether assessed before or after the~~  
5 ~~deceased settlor's death, other than property taxes and~~  
6 ~~assessments secured by real property liens.~~

7 ~~(3) Liability for the funeral expenses of the deceased~~  
8 ~~settlor.~~

9 ~~(4) Liability for any claim that decedent is bound by~~  
10 ~~a contract to make a will, trust, or other promise to leave~~  
11 ~~property on decedent's death, whether for specific~~  
12 ~~property or otherwise.~~

13 ~~(b) "Claim" does not include a dispute regarding a~~  
14 ~~claim that decedent did not have title to specific property~~  
15 ~~alleged to be included in the trust estate.~~

16 ~~(c) "Claimant" means a person who may have a~~  
17 ~~claim, as defined in subdivision (a), against trust property~~  
18 ~~and who has filed a timely claim pursuant to Section~~  
19 ~~19100.~~

20 ~~(d) "Trust" means a trust described in Section 18200,~~  
21 ~~or, if a portion of a trust, that portion that remained~~  
22 ~~subject to the power of revocation at the deceased~~  
23 ~~settlor's death.~~

24 ~~(e) "Deceased settlor" means a deceased person who,~~  
25 ~~at the time of his or her death, held the power to revoke~~  
26 ~~the trust in whole or in part.~~

27 ~~(f) "Debts" means all claims, as defined in subdivision~~  
28 ~~(a), all expenses of administration, and all other proper~~  
29 ~~charges against the trust estate, including taxes.~~

30 ~~SEC. 39. Section 19150.5 is added to the Civil Code, to~~  
31 ~~read:~~

32 ~~19150.5. No action or proceeding can be filed for~~  
33 ~~imposition of a constructive trust or other equitable claim~~  
34 ~~described in subdivision (a) against property passing~~  
35 ~~through the trust estate without complying with~~  
36 ~~paragraph (4) of this part.~~

37 ~~SEC. 40.~~

38 ~~SEC. 29. Section 19028 of the Probate Code is~~  
39 ~~repealed.~~

40 ~~SEC. 41.~~

1     *SEC. 30.* Section 20123 of the Probate Code is  
2 amended to read:

3     20123. (a) The court, upon making a determination  
4 as provided in this article, shall make an order:

5     (1) Directing the personal representative to charge  
6 the prorated amounts against the persons against whom  
7 an estate tax has been prorated insofar as the personal  
8 representative is in possession of any property or interests  
9 of the persons against whom the charge may be made.

10    (2) Summarily directing all other persons against  
11 whom an estate tax has been prorated to make payment  
12 of the prorated amounts to the personal representative.

13    (b) A court order made under this section is a  
14 judgment that may be enforced against the persons  
15 against whom an estate tax has been prorated.

16    ~~SEC. 42.~~

17    *SEC. 31.* Section 20223 of the Probate Code is  
18 amended to read:

19    20223. (a) The court, upon making a determination  
20 as provided in this article, shall make an order:

21    (1) Directing the trustee to charge the prorated  
22 amounts against the transferees against whom the  
23 generation-skipping transfer tax has been prorated  
24 insofar as the trustee is in possession of any property or  
25 interests of the transferees against whom the charge may  
26 be made.

27    (2) Summarily directing all other transferees against  
28 whom the generation-skipping transfer tax has been  
29 prorated to make payment of the prorated amounts to the  
30 trustee.

31    (b) A court order made under this section is a  
32 judgment that may be enforced against the persons  
33 against whom a generation-skipping transfer tax has been  
34 prorated.

35    ~~SEC. 43.~~

36    *SEC. 32.* Section 21350 of the Probate Code is  
37 amended to read:

38    21350. (a) Except as provided in Section 21351, no  
39 provision, or provisions, of any instrument shall be valid  
40 to make any donative transfer to any of the following:

1 (1) The person who drafted the instrument.

2 (2) A person who is related by blood or marriage to, is  
3 a cohabitant with, or is an employee of, the person who  
4 drafted the instrument.

5 (3) Any partner or shareholder of any law partnership  
6 or law corporation in which the person described in  
7 paragraph (1) has an ownership interest, and any  
8 employee of any such law partnership or law corporation.

9 (4) Any person who has a fiduciary relationship with  
10 the transferor, including, but not limited to, a conservator  
11 or trustee, who transcribes the instrument or causes it to  
12 be transcribed.

13 (5) A person who is related by blood or marriage to, is  
14 a cohabitant with, or is an employee of a person who is  
15 described in paragraph (4).

16 (6) A care custodian of a dependent adult.

17 (b) For purposes of this section, “a person who is  
18 related by blood or marriage” to a person means all of the  
19 following:

20 (1) The person’s spouse or predeceased spouse.

21 (2) Relatives within the third degree of the person and  
22 of the person’s spouse.

23 (3) The spouse of any person described in paragraph  
24 (2).

25 In determining any relationship under this subdivision,  
26 Sections 6406, 6407, and Chapter 2 (commencing with  
27 Section 6450) of Part 2 of Division 6 shall be applicable.

28 (c) For purposes of this section, the term “dependent  
29 adult” has the meaning set forth in Section 15610.23 of  
30 Welfare and Institutions Code and also includes persons  
31 who are older than age 64. The term “care custodian” has  
32 the meaning set forth in Section 15610.17 of Welfare and  
33 Institutions Code.

34 ~~SEC. 44.~~

35 *SEC. 33.* Section 10850 of the Welfare and Institutions  
36 Code is amended to read:

37 10850. (a) Except as otherwise provided in this  
38 section, all applications and records concerning any  
39 individual made or kept by any public officer or agency  
40 in connection with the administration of any provision of

1 this code relating to any form of public social services for  
2 which grants-in-aid are received by this state from the  
3 United States government shall be confidential, and shall  
4 not be open to examination for any purpose not directly  
5 connected with the administration of that program, or  
6 any investigation, prosecution, or criminal or civil  
7 proceeding conducted in connection with the  
8 administration of any such program. The disclosure of any  
9 information which identifies by name or address any  
10 applicant for or recipient of these grants-in-aid to any  
11 committee or legislative body is prohibited, except as  
12 provided in subdivision (b).

13 (b) Except as otherwise provided in this section, no  
14 person shall publish or disclose or permit or cause to be  
15 published or disclosed any list of persons receiving public  
16 social services. Any county welfare department in this  
17 state may release lists of applicants for, or recipients of,  
18 public social services, to any other county welfare  
19 department or the State Department of Social Services,  
20 and these lists or any other records shall be released when  
21 requested by any county welfare department or the State  
22 Department of Social Services. These lists or other  
23 records shall only be used for purposes directly connected  
24 with the administration of public social services. Except  
25 for those purposes, no person shall publish, disclose, or use  
26 or permit or cause to be published, disclosed, or used any  
27 confidential information pertaining to an applicant or  
28 recipient.

29 Any county welfare department and the State  
30 Department of Social Services shall provide any  
31 governmental entity which is authorized by law to  
32 conduct an audit or similar activity in connection with the  
33 administration of public social services, including any  
34 committee or legislative body so authorized, with access  
35 to any public social service applications and records  
36 described in subdivision (a) to the extent of the  
37 authorization. Those committees, legislative bodies and  
38 other entities may only request or use these records for  
39 the purpose of investigating the administration of public  
40 social services, and shall not disclose the identity of any



1 applicant or recipient except in the case of a criminal or  
2 civil proceeding conducted in connection with the  
3 administration of public social services.

4 However, this section shall not prohibit the furnishing  
5 of this information to other public agencies to the extent  
6 required for verifying eligibility or for other purposes  
7 directly connected with the administration of public  
8 social services, or to county superintendents of schools or  
9 superintendents of school districts only as necessary for  
10 the administration of federally assisted programs  
11 providing assistance in cash or in-kind or services directly  
12 to individuals on the basis of need. Any person knowingly  
13 and intentionally violating the provisions of this  
14 subdivision is guilty of a misdemeanor.

15 Further, in the context of a petition for the  
16 appointment of a conservator for a person who is  
17 receiving or has received aid from a public agency, as  
18 indicated above, or in the context of a criminal  
19 prosecution for a violation of Section 368 of the Penal  
20 Code:

21 (1) An Adult Protective Services employee or  
22 Ombudsman may answer truthfully at any proceeding  
23 related to such petition or prosecution when asked if he  
24 or she is aware of information that he or she believes is  
25 related to the legal mental capacity of that aid recipient,  
26 or the need for a conservatorship for that aid recipient. If  
27 the Adult Protective Services employee or Ombudsman  
28 states that he or she is aware of such information, the  
29 court may order the Adult Protective Services employee  
30 or Ombudsman to testify about his or her observations  
31 and to disclose all relevant agency records, and

32 (2) The court may order the Adult Protective Services  
33 employee or Ombudsman to testify about his or her  
34 observations and to disclose any relevant agency records  
35 if the court has other independent reason to believe that  
36 the Adult Protective Services employee or Ombudsman  
37 has information that would facilitate the resolution of the  
38 matter.

39 (c) The State Department of Social Services shall  
40 inform the Department of Motor Vehicles of the names,

1 birth dates, and addresses of all applicants or recipients of  
2 aid to the blind. The Department of Motor Vehicles, upon  
3 receipt of such information, shall inform the State  
4 Department of Social Services of any such applicant or  
5 recipient of aid to the blind who holds a valid state driver's  
6 license.

7 (d) The State Department of Social Services may  
8 make rules and regulations governing the custody, use,  
9 and preservation of all records, papers, files, and  
10 communications pertaining to the administration of the  
11 laws relating to public social services under their  
12 jurisdiction. The rules and regulations shall be binding on  
13 all departments, officials and employees of the state, or of  
14 any political subdivision of the state and may provide for  
15 giving information to or exchanging information with  
16 agencies, public or political subdivisions of the state, and  
17 may provide for giving information to or exchanging  
18 information with agencies, public or private, which are  
19 engaged in planning, providing or securing social services  
20 for or in behalf of recipients or applicants; and for making  
21 case records available for research purposes, provided,  
22 that the research will not result in the disclosure of the  
23 identity of applicants for or recipients of public social  
24 services.

25 (e) Any person, including every public officer and  
26 employee, who knowingly secures or possesses, other  
27 than in the course of official duty, an official list or a list  
28 compiled from official sources, published or disclosed in  
29 violation of this section, of persons who have applied for  
30 or who have been granted any form of public social  
31 services for which state or federal funds are made  
32 available to the counties is guilty of a misdemeanor.

33 (f) This section shall not be construed to prohibit an  
34 employee of a county welfare department from disclosing  
35 confidential information concerning a public social  
36 services applicant or recipient to a state or local law  
37 enforcement agency investigating or gathering  
38 information regarding a criminal act committed in a  
39 welfare department office, a criminal act against any  
40 county or state welfare worker, or any criminal act

1 witnessed by any county or state welfare worker while  
 2 involved in the administration of public social services at  
 3 any location. Further, this section shall not be construed  
 4 to prohibit an employee of a county welfare department  
 5 from disclosing confidential information concerning a  
 6 public social services applicant or recipient to a state or  
 7 local law enforcement agency investigating or gathering  
 8 information regarding a criminal act intentionally  
 9 committed by the applicant or recipient against any  
 10 off-duty county or state welfare worker in retaliation for  
 11 an act performed in the course of the welfare worker's  
 12 duty when the person committing the offense knows or  
 13 reasonably should know that the victim is a state or  
 14 county welfare worker. These criminal acts shall include  
 15 only those which are in violation of state or local law.  
 16 Disclosure of confidential information pursuant to this  
 17 subdivision shall be limited to the applicant's or  
 18 recipient's name, physical description, and address.

19 (g) The provisions of this section shall be operative  
 20 only to the extent permitted by federal law and shall not  
 21 apply to, but exclude, Chapter 7 (commencing with  
 22 Section 14000) of this division, entitled "Basic Health  
 23 Care", and for which a grant-in-aid is received by the  
 24 state under Title XIX of the Social Security Act.

25 ~~SEC. 45.~~

26 *SEC. 34.* Section 14100.2 of the Welfare and  
 27 Institutions Code is amended to read:

28 14100.2. (a) All types of information, whether  
 29 written or oral, concerning a person, made or kept by any  
 30 public officer or agency in connection with the  
 31 administration of any provision of this chapter, Chapter  
 32 8 (commencing with Section 14200), or Chapter 8.7  
 33 (commencing with Section 14520) and for which a  
 34 grant-in-aid is received by this state from the United  
 35 States government pursuant to Title XIX of the Social  
 36 Security Act shall be confidential, and shall not be open  
 37 to examination other than for purposes directly  
 38 connected with the administration of the Medi-Cal  
 39 program. However, in the context of a petition for the  
 40 appointment of a conservator for a person with respect to

1 whom such information is made or kept, and in the  
2 context of a criminal prosecution for a violation of Section  
3 368 of Penal Code with respect to such a person, all of the  
4 following shall apply:

5 A public officer or employee of any such agency may  
6 answer truthfully at any proceeding related to such  
7 petition or prosecution, when asked if he or she is aware  
8 of information that he or she believes is related to the  
9 legal mental capacity of that aid recipient, or the need for  
10 a conservatorship for that aid recipient. If the officer or  
11 employee states that he or she is aware of this information  
12 the court may order the officer or employee to testify  
13 about his or her observations and to disclose any relevant  
14 agency records if the court has an other independent  
15 reason to believe that the officer or employee has  
16 information that would facilitate the resolution of the  
17 matter.

18 (b) Except as provided in this section and to the extent  
19 permitted by federal law or regulation all information  
20 about applicants and recipients as provided for in  
21 subdivision (a) to be safeguarded includes, but is not  
22 limited to, names and addresses, medical services  
23 provided, social and economic conditions or  
24 circumstances, agency evaluation of personal  
25 information, and medical data, including diagnosis and  
26 past history of disease or disability.

27 (c) Purposes directly connected with the  
28 administration of the Medi-Cal program, Chapter 8  
29 (commencing with Section 14200), or Chapter 8.7  
30 (commencing with Section 14520) encompass those  
31 administrative activities and responsibilities the State  
32 Department of Health Services and its agents are  
33 required to engage in to insure effective program  
34 operations. ~~Such activities include~~ *These activities*  
35 *include*, but are not limited to: establishing eligibility and  
36 methods of reimbursement; determining the amount of  
37 medical assistance; providing services for recipients;  
38 conducting or assisting an investigation, prosecution, or  
39 civil or criminal proceeding related to the administration  
40 of the Medi-Cal program; and conducting or assisting a

1 legislative investigation or audit related to the  
2 administration of the Medi-Cal program.

3 (d) Any officer, agent, or employee of the State  
4 Department of Health Services or of any public agency  
5 shall provide the Joint Legislative Audit Committee and  
6 the Auditor General with any and all the information  
7 described in subdivision (b) within a reasonable period  
8 of time as determined by the committee in consultation  
9 with the State Department of Health Services, after  
10 receipt of a request from the committee approved by a  
11 majority of the members of the committee. The Joint  
12 Legislative Audit Committee and the Auditor General  
13 may use such information only for the purpose of  
14 investigating or auditing the administration of the  
15 Medi-Cal program, Chapter 8 (commencing with Section  
16 14200), or Chapter 8.7 (commencing with Section 14520),  
17 and shall not use such information for commercial or  
18 political purposes. In any case where disclosure of  
19 information is authorized by this section, the Joint  
20 Legislative Audit Committee or the Auditor General shall  
21 not disclose the identity of any applicant or recipient,  
22 except in the case of a criminal or civil proceeding  
23 conducted in connection with the administration of the  
24 Medi-Cal program.

25 (e) The access to information provided in subdivision  
26 (d) shall be permitted only to the extent and under the  
27 conditions provided by federal law and regulations  
28 governing the release of such information.

29 (f) The State Department of Health Services may  
30 make rules and regulations governing the custody, use  
31 and preservation of all records, papers, files and  
32 communications pertaining to the administration of the  
33 laws relating to the Medi-Cal program, Chapter 8  
34 (commencing with Section 14200), or Chapter 8.7  
35 (commencing with Section 14520). The rules and  
36 regulations shall be binding on all departments, officials  
37 and employees of the state, or of any political subdivision  
38 of the state and may provide for giving information to or  
39 exchanging information with agencies, public or political  
40 subdivisions of the state, and may provide for giving

1 information to or exchanging information with agencies,  
2 public or private, which are engaged in planning,  
3 providing or securing such services for or in behalf of  
4 recipients or applicants; and for making case records  
5 available for research purposes, provided, that such  
6 research will not result in the disclosure of the identity of  
7 applicants for or recipients of such services.

8 (g) Upon request, the department shall release to the  
9 negotiator established pursuant to Article 2.6  
10 (commencing with Section 14081) all computer tapes and  
11 any modifications thereto, including paid claims,  
12 connected with the administration of the Medi-Cal  
13 program which are in the possession or under the control  
14 of the department, including tapes prepared prior to the  
15 effective date of this section.

16 To ensure compliance with federal law and regulations,  
17 the department shall make the minimum necessary  
18 modifications to its computer tapes prior to releasing the  
19 tapes to the negotiator in order to assure the  
20 confidentiality of the identity of all applicants for, or  
21 recipients of, those services. The department shall not  
22 make any modifications to paid claims tapes which affect  
23 information regarding beneficiaries' aid categories or  
24 counties of origin.

25 (h) Any person who knowingly releases or possesses  
26 confidential information concerning persons who have  
27 applied for or who have been granted any form of  
28 Medi-Cal benefits or benefits under Chapter 8  
29 (commencing with Section 14200) or Chapter 8.7  
30 (commencing with Section 14520) for which state or  
31 federal funds are made available in violation of this  
32 section is guilty of a misdemeanor.

33 ~~SEC. 46.~~

34 *SEC. 35.* Section 15610.30 of the Welfare and  
35 Institutions Code is amended to read:

36 15610.30. (a) "Fiduciary abuse" means a situation in  
37 which one or both of the following apply:

38 (1) A person, including, but not limited to, one who  
39 has the care or custody of, or who stands in a position of  
40 trust to, an elder or a dependent adult, takes, secretes, or



1 appropriates their money or property, to any wrongful  
2 use, or for any purpose not in the due and lawful  
3 execution of his or her trust.

4 (2) A situation in which all of the following conditions  
5 are satisfied:

6 (A) An elder (who would be a dependent adult if he  
7 or she were between the ages of 18 and 64) or dependent  
8 adult or his or her representative requests that a third  
9 party transfer to the elder or dependent adult or to his or  
10 her representative, or to a court appointed receiver,  
11 property that meets all of the following criteria:

12 (i) The third party holds or has control of the property,  
13 and

14 (ii) The property belongs to, or is held in express trust,  
15 constructive trust or resulting trust for, the elder or  
16 dependent adult, and

17 (iii) The ownership or control of the property was  
18 acquired in whole or in part by the third party or someone  
19 acting in concert with the third party from the elder or  
20 dependent adult at a time when the elder or dependent  
21 adult was a dependent adult or was a person who would  
22 have been a dependent adult if he or she had then been  
23 between the ages of 18 and 64.

24 (B) Despite the request for the transfer of property,  
25 the third party without good cause either continues to  
26 hold the property or fails to take reasonable steps to make  
27 the property readily available to the elder or dependent  
28 adult, to his or her representative or to a court appointed  
29 receiver.

30 (C) The third party committed acts described in this  
31 paragraph in bad faith, or despite the fact that the third  
32 party either knew of, or had received from the elder or  
33 dependent adult, or from the elder or dependent adult's  
34 representative, sufficient information such that a  
35 reasonable person would have considered obvious under  
36 the circumstances that the elder or dependent adult's  
37 right to have the property so transferred or so made  
38 readily available.

39 (b) For the purpose of this section, the term "third  
40 party" means a person who holds or has control of

1 property which belongs to or is held in express trust,  
2 constructive trust or resulting trust for an elder or  
3 dependent adult.

4 (c) For the purposes of this section, the term  
5 “representative” means an elder or dependent adult’s  
6 conservator, attorney, attorney in fact, the personal  
7 representative of his or her estate, or the trustee of his or  
8 her revocable or irrevocable trust.

9 ~~(d) For the purposes of Article 8.5 (commencing with~~  
10 ~~Section 15657) the commission of fiduciary abuse as~~  
11 ~~defined in this paragraph shall constitute oppression.~~

12 ~~SEC. 47.~~

13 *SEC. 36.* Section 15657 of the Welfare and Institutions  
14 Code is amended to read:

15 15657. Where it is proven by clear and convincing  
16 evidence that a defendant is liable for physical abuse as  
17 defined in subdivision (c) of Section 15610, neglect as  
18 defined in subdivision (d) of Section 15610, or fiduciary  
19 abuse as defined in subdivision (f) of Section 15610, and  
20 that the defendant has been guilty of recklessness,  
21 oppression, fraud, or malice in the commission of this  
22 abuse, in addition to all other remedies otherwise  
23 provided by law:

24 (a) The court shall award to the plaintiff reasonable  
25 attorney’s fees and costs. The term “costs” includes, but  
26 is not limited to, reasonable fees for the services of a  
27 conservator, if any, devoted to the litigation of a claim  
28 brought under this article.

29 (b) The limitations imposed by Section 33734 of the  
30 Code of Civil Procedure on the damages recoverable  
31 shall not apply. However, the damages recovered shall  
32 not exceed the damages permitted to be recovered  
33 pursuant to subdivision (b) of Section 3333.2 of the Civil  
34 Code.

35 (c) The standards set forth in subdivision (b) of  
36 Section 3294 of the Civil Code regarding the imposition  
37 of punitive damages on an employer based upon the acts  
38 of an employee shall be satisfied before any damages or

1 attorney's fees permitted under this section may be  
2 imposed against an employer.

O

